

SENATE BILL 384

By Davis L

AN ACT to amend Tennessee Code Annotated, Section 40-14-101, relative to the right of the accused to receive a speedy trial in all criminal prosecutions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-14-101, is amended by designating the existing language as subsection (a), and by adding the following new language to be designated as subsection (b):

(b)

(1) After a criminal action is commenced, the defendant is entitled to a speedy trial.

(2) Insofar as is practicable, the trial of a criminal action must be given preference over any civil case; and the trial of a criminal action where the defendant has been committed to the custody of the sheriff during the pendency of the criminal action must be given preference over other criminal actions.

(3) Except as otherwise provided in subdivision (5) of this subsection, upon motion made by a criminal defendant, the Trial Court must grant such defendant a trial date within one of the following:

(A) Six (6) months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony;

(B) Ninety (90) days of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three (3) months and none of which is a felony;

(C) Sixty (60) days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of not more than three (3) months and none of which is a crime punishable by a sentence of imprisonment of more than three (3) months;

(4) Except as provided in subdivision (5) of this subsection, where a defendant has been committed to the custody of the sheriff in a criminal action, the defendant must be released on bail or on the defendant's own recognizance, upon such conditions as may be just and reasonable, if the state is not ready for trial of that criminal action within:

(A) Ninety (90) days from the commencement of the defendant's commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a felony;

(B) Thirty (30) days from the commencement of the defendant's commitment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three (3) months and none of which is a felony;

(C) Fifteen (15) days from the commencement of the defendant's commitment to the custody of the sheriff in a criminal action wherein the

defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of not more than three (3) months and none of which is a crime punishable by a sentence of imprisonment of more than (3) three months;

(5)

(A) Subdivisions (3) and (4) of this subsection do not apply to a criminal action wherein the defendant is accused of an offense defined in T.C.A. Sections 39-13-202, 39-13-210, 39-13-211, 39-13-218, 39-13-304, 39-13-305, 39-13-502, 39-13-504, and 39-13-522.

(B) A motion made pursuant to subdivisions (3) or (4) of this subsection upon expiration of the specified period may be denied where the state is not ready for trial if the state had been ready for trial prior to the expiration of the specified period and the present unreadiness is due to some exceptional fact or circumstance, including, but not limited to, the sudden unavailability of evidence material to the state's case, when the district attorney general has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available in a reasonable period.

(C) A motion made pursuant to subdivision (4) shall not:

(i) Apply to any defendant who is serving a term of imprisonment for another offense;

(ii) Require the release from custody of any defendant who is also being held in custody pending trial of another criminal charge as to which the applicable period has not yet elapsed;

(iii) Prevent the redetention of or otherwise apply to any defendant who, after being released from custody pursuant to this section

or otherwise, is charged with another crime or violates the conditions on which the defendant has been released, by failing to appear at a judicial proceeding at which the defendant's presence is required or otherwise.

(6) In computing the time within which the state must be ready for trial pursuant to subdivisions (3) and (4) of this subsection, the following periods must be excluded:

(A) A reasonable period of delay resulting from other proceedings concerning the defendant, including, but not limited to: proceedings for the determination of competency and the period during which the defendant is incompetent to stand trial; demand to produce; request for a bill of particulars; pre-trial motions; appeals; trial of other charges; and the period during which such matters are under consideration by the court; or

(B) The period of delay resulting from a continuance granted by the court at the request of, or with the consent of, the defendant or the defendant's counsel. The court must grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt dispositions of criminal charges. A defendant without counsel must not be deemed to have consented to a continuance unless the defendant has been advised by the court of the defendant's rights under these rules and the effect of the defendant's consent; or

(C)

(i) The period of delay resulting from the absence or unavailability of the defendant. A defendant must be considered absent whenever the defendant's location is unknown and the defendant is attempting to avoid apprehension or prosecution, or the defendant's location cannot be determined by due diligence. A defendant must be considered

unavailable whenever the defendant's location is known but the defendant's presence for trial cannot be obtained by due diligence; or

(ii) Where the defendant has either escaped from custody or has failed to appear when required after having previously been released on bail or on the defendant's own recognizance, and provided the defendant is not in custody on another matter, the period extending from the day the court issues a bench warrant because of the defendant's failure to appear in court when required, to the day the defendant subsequently appears in the court pursuant to a bench warrant or voluntarily or otherwise; or

(D) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial pursuant to this section has not run and good cause is not shown for granting a severance; or

(E) The period of delay resulting from detention of the defendant in another jurisdiction provided the district attorney general is aware of such detention and has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial; or

(F) The period during which the defendant is without counsel through no fault of the court; except when the defendant is proceeding as the defendant's own attorney with the permission of the court; or

(G) Other periods of delay occasioned by exceptional circumstances, including, but not limited to, the period of delay resulting from a continuance granted at the request of a district attorney general if:

(i) the continuance is granted because of the unavailability of evidence material to the state's case, when the district attorney general has exercised due diligence to obtain such evidence and there are

reasonable grounds to believe that such evidence will become available in a reasonable period; or

(ii) the continuance is granted to allow the district attorney general additional time to prepare the state's case and additional time is justified by the exceptional circumstances of the case; or

(H) The period during which an action has been adjourned by the court in contemplation of dismissal.

(7) For purposes of this section:

(A) where the defendant is to be tried following the withdrawal of the plea of guilty or is to be retried following a mistrial, an order for a new trial or an appeal or collateral attack, the criminal action and the commitment to the custody of the sheriff, if any, must be deemed to have commenced on the date the withdrawal of the plea of guilty or the date the order occasioning a retrial becomes final;

(B) Where a defendant has been served with a misdemeanor citation, the criminal action must be deemed to have commenced on the date the defendant first appears in a court in response to the citation;

(C) Where a criminal action is commenced by the filing of a felony complaint and, thereafter, in the course of the same criminal action either the felony complaint is replaced with an indictment or presentment, the period applicable for the purposes of subdivision (3) of this subsection must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6) of this subsection, already elapsed from the date of the filing of the felony complaint to the date of the filing of the new

accusatory instrument exceeds six months, the period applicable to the charges in the felony complaint must remain applicable and continue as if the new accusatory instrument had not been filed;

(D) Where a criminal action is commenced by the filing of a felony complaint and, thereafter, in the course of the same criminal action either the felony complaint is replaced with an indictment or presentment, the period applicable for the purposes of subdivision (4) of this subsection must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6) of this subsection, already elapsed from the date of the filing of the felony complaint to the date of the filing of the new accusatory instrument exceeds ninety (90) days, the period applicable to the charges in the felony complaint must remain applicable and continue as if the new accusatory instrument had not been filed;

(E) Where a count of an indictment is reduced to charge only a misdemeanor and a reduced indictment is filed, the period applicable for the purposes of subdivision (3) of this subsection must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6) of this section, already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds six (6) months, the period applicable to the charges in the original indictment must remain applicable and continue as if the new accusatory instrument had not been filed;

(F) Where a count of an indictment is reduced to charge only a misdemeanor and a reduced indictment is filed, the period applicable for the purposes of subdivision (4) of this subsection must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6) of this subsection, already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds ninety (90) days, the period applicable to the charges in the indictment must remain applicable and continue as if the new accusatory instrument had not been filed.

SECTION 2. This act shall take effect July 1, 2002, the public welfare requiring it.